

WORKERS' COMPENSATION

I. LEGAL AUTHORITY:

Rehabilitation Act of 1973, as amended; Rhode Island General Laws 28-33-1 through 47; PL 1992 Chapter 31 § 11.

II. POLICY STATEMENT AND PURPOSE:

In order to maximize all resources available to an injured worker, the Office of Rehabilitation Services (ORS) will work with the injured worker, the Department of Labor and Training (DLT), Division of Workers' Compensation and the employer to develop and implement a rehabilitation plan designed to return the worker to employment, optimally to his/her previous position. If this is determined to be unfeasible, every effort will be made to secure an appropriate position. All services determined necessary may be coordinated and/or provided by the VR counselor in conjunction with DOL or a private rehabilitation facility.

During the rehabilitation process, physical and mental restoration services for the compensable injury will be provided by the employer and the individual's workers' compensation benefits will not be diminished or terminated. If an individual refuses to participate in an approved rehabilitation program, those benefits may be affected.

Certain individuals who have incurred injuries after May 18, 1992 are subject to the right to reinstatement provisions of R.I. Workers Compensation Law (PL 1992 ch. 31 ' 11). This provides that employers with nine (9) or more employees must give an injured worker his or her former position or a comparable position according to seniority rights and collective bargaining rules.

A. Definition of Terms

1. Independent Medical Evaluation

An objective third party medical examination of the injured workers functional limitations.

2. Earnings Capacity

The weekly straight time gross earnings which an employee would receive if the employee accepted an actual offer of suitable alternative employment.

3. Job Analysis

The gathering, evaluating, and recording of accurate, objective, and complete job data. Job analysis identifies and describes, in a systematic and comprehensive but succinct manner:

- a. What the worker does in terms of activities or functions.
- b. How the work is done -- the methods, techniques, or processes involved, and the tools or equipment used.
- c. Results of the work -- the goods produced, services rendered.
- d. Worker characteristics -- the skills, knowledge, abilities, and adaptations needed to accomplish the tasks involved.
- e. Context of the work in terms of environmental and organizational factors, and the degree of the worker's discretion, responsibility, or accountability.

4. Labor Market Survey

Labor Market Survey is an in-depth evaluation of the local labor market as it pertains to the injured worker's vocational goal. Labor market surveys must include at least two possible job titles and descriptions related to the goal, a statement of how/why the injured worker can perform the essential functions of both jobs, the estimated starting salary, and an objective evaluation of placement potential in these fields.

5. Maximum Medical Improvement

Maximum medical improvement is the stabilization of a medically determinable physical or mental impairment as a result of injury where no further treatment is reasonably expected to materially improve the condition.

6. Suitable Alternative Employment

Suitable alternative employment means a bona fide offer of employment which the employee is physically able to perform. Moreover, such employment must not exacerbate the employee's health condition and bear a reasonable relationship to the employee's qualifications, background, education and training.

7. Transfer of Skills Analysis

This is an analysis of the injured worker's aptitude, education, vocational history, interests, and vocational limitations. The analysis can later be used to locate actual jobs the injured worker could perform immediately or with short-term training.

III. PROCEDURES:

- A. Assessment of the disability and vocational limitations will be accomplished by the following steps:
 - 1. The survey interview and ORS-4 form must be completed. The client must sign Medical Release Forms (ORS-37); these forms are then sent to the applicant's:
 - a. Treating physician,
 - b. Insurance company, and
 - c. Attorney, if applicable.
 - 2. A Work Restriction Evaluation Form (ORS-6) will be also be sent to the injured worker's treating physician for completion and return.
 - 3. When the injured worker prefers to consult with her/his attorney prior to signing the Initial Survey form and Medical Release forms, these documents will be completed by the VR Counselor and given to the individual. The individual will be instructed to sign the forms and return them to the counselor within 30 days or a denial letter (ORS-122) will be sent to client.
- B. Assessment of vocational rehabilitation need is accomplished by:
 - 1. The counselor must obtain all pertinent information needed to assess:
 - a. Impairment,
 - b. Functional limitations,
 - c. Vocational handicap, and
 - d. Prognoses or projections regarding maximum medical improvement.
 - 2. If medical data indicates possible return to the previous job, the counselor must:
 - a. Obtain the job description with the essential functions of the job;
 - b. When appropriate, assess in conjunction with a Rehabilitation Engineer reasonable accommodations necessary to effect a return to work.

3. If a bona fide opportunity to return to the job exists,
 - a. The job description must be sent to the treating physician for written approval prior to commencing employment.
 - 1) If approval to return to this job is received, an IPE can be prepared, or
 - 2) If return to the prior job is not approved by the doctor, the worker follows procedures set forth in III., B., 4. below.
 - 3) If the injured worker refuses this offer of employment and requests other services, a letter of denial (ORS-122) will be sent to:
 - a) the injured worker,
 - b) her/his attorney, and
 - c) the insurance company.
4. A transfer of skills analysis will be completed to identify alternative employment options with the previous employer or if return to work in the previous position is not feasible due to medical reasons or no opening exists. This analysis can later be used to locate actual jobs the injured worker could perform immediately or with short-term training.
 - a. Once a goal is identified with the client, suitable employment must be substantiated.
 - 1) A labor market survey is conducted to determine the appropriateness and marketability of the goal.
 - b. A letter containing the vocational goal, Dictionary of Occupational Titles (DOT) designation, job description, physical requirements and work restriction form will be sent to the treating physician requesting approval of the goal. A reasonable accommodation evaluation should be included, if appropriate.
 - 1) If an affirmative response is received, an IPE can be prepared.
 - 2) If medical approval is not received, a new plan may be developed. A new goal shall be chosen using the transfer of skills analysis or vocational testing.

- 3) If the injured worker refuses to pursue the new goal and requests other services, a letter of denial (ORS-122) will be sent to:
 - a) the injured worker,
 - b) her/his attorney, and
 - c) the insurance company.
- c. When the transfer of skills analysis does not produce an appropriate marketable goal for the injured worker, vocational testing will be administered.
 - 1) The results of the vocational testing will be discussed with the client and a specific goal formulated.
 - 2) A labor market survey will be conducted to ensure the appropriateness of the goal as it pertains to the injured worker as well as the marketability of the injured worker upon completion of training.
 - a) The goal must meet the suitable employment definition.
 - b) The training should be geared toward entry-level employment within the career goal.
 - 3) A letter containing the vocational goal, Dictionary of Occupational Titles (DOT) designation, job description, physical requirements and work restriction form will be sent to the treating physician requesting approval of the goal. The reasonable accommodation evaluation should be included, if appropriate.
 - 4) If the individual refuses to accept a goal after vocational testing which is approved by both the counselor and the physician, a letter of denial (ORS-122) will be sent to:
 - a) the individual,
 - b) her/his attorney, and
 - c) the insurance company.

C. Development of IPE

1. When the counselor, injured worker and treating physician agree on the vocational goal, an IPE is developed and signed by the injured worker, counselor, and supervisor.

2. Similar benefits (Workers' Compensation Insurance, Pell Grants, etc.) must be explored and included in IPEs for Workers' Compensation recipients prior to VR participation in vocational training, OJT, etc.
3. All IPE's and amendments will be sent to the injured worker and the Director of the Department of Labor and Training (DLT) or her/his designee with supporting documentation and a "Request for Approval of Rehabilitation Plan" (R-2 form).
 - a. The Director of the Department of Labor and Training or her/his designee will review the plan and R-2 and forward it to the insurance company and attorney (if applicable) with a cover letter requesting their input to this plan within 20 working days.
4. When objections to the plan exist, the Director of Labor or the designee will attempt to rectify the discrepancy.
 - a. The VR Counselor may be requested to justify the plan either in writing or in person at a DOL negotiation meeting.
 - b. All recommendations for changes to the IPE will be sent to the VR counselor who is responsible for revision and re-submission to DOL for approval.
5. Once the IPE is approved by the DOL, it will be returned to the VR counselor for implementation or coordination.
6. After the goal and objectives of the IPE have been achieved, the counselor must assess an earnings capacity for the client and send it in writing to the DOL.

D. Right to Reinstatement

1. When the goal is to return to previous employment, the worker must contact the Department of Labor and Training for all the steps necessary under right to reinstatement.

E. OTHER ISSUES

1. DLT Case Conferences and Mediation
 - a. Counselors are encouraged to use the DLT case conference at any point in the rehabilitation process to ensure cooperation and understanding by all parties.

- b. A DLT case conference includes all team members (rehabilitation professionals, clients, attorneys and others) to discuss issues and potential areas of conflict.

2. IPEs NOT APPROVED BY DLT

- a. When plans are not approved by DLT even after mediation, the client with the concurrence of his/her counselor can proceed with the services outlined in the IPE.
- b. The client may choose not to submit the IPE for DLT approval and may continue with vocational rehabilitation services as outlined in the IPE.
- c. If the client and the counselor agree to proceed with an IPE not approved by DLT, the client must be advised of the risk of loss or reduction of Workers' Compensation benefits.

3. Forms

ORS-6 Work Restriction Form

Submitted to treating physician to assist in eligibility and IPE development.

R-2 Request for Approval of Rehabilitation Plan

Submitted to the DLT's Division of Workers' Compensation with the individual's IPE for DLT approval and protection of Workers' Compensation benefits.

R-3 Request for Modification of Approved Rehabilitation Plans

Submitted to DLT Division of Workers' Compensation in conjunction with ORS IPE amendments for DLT approval and continued protection of Workers' Compensation benefits.

R-4 Rehabilitation Services Closure Report

Submitted to DLT Division of Workers' Compensation when case is closed from ORS VR Files.

R-5 Request for assistance or conference

**RHODE ISLAND DEPARTMENT OF HUMAN SERVICES
OFFICE OF REHABILITATION SERVICES
POLICY AND PROCEDURES MANUAL**

**Section 115.27
Rev. 10/95**

Submitted to DLT Division of Workers' Compensation to openly discuss problems or issues concerning any active workers' compensation recipient.